

# NORTHWEST ENVIRONMENTAL ADVOCATES



March 31, 2017

Jill Fullagar  
Office of Water & Watersheds  
U.S. Environmental Protection Agency  
1200 Sixth Ave.  
Seattle, WA 98101

*Via email only:* Fullagar.jill@epa.gov

**Re: EPA Additions to Oregon's 303(d) List**

Dear Ms. Fullagar:

The U.S. Environmental Protection Agency (EPA) has issued a notice seeking public comment on its proposed additions to Oregon's 303(d) list. We support EPA's additions and EPA's finding that the Oregon Department of Environmental Quality (DEQ) failed to "assemble and evaluate all readily available data and information for all waters of the State." We disagree, however, with the scope of EPA's additions for the reasons set out in our comments to DEQ on its draft list that we previously provided to EPA. We regret that EPA has chosen to limit public comment to its proposed additions rather than to address the question of whether those additions are based on a complete review of all readily available data and information and whether EPA has used appropriate listing methodologies in deriving its proposed additions (i.e., using DEQ's listing methodologies).

In its Enclosure 4, EPA sets out 333 waterbodies for which listings have been added. The sources are limited to: DEQ, Oregon Health Authority, Oregon Invasive Species Hotline, U.S. Geological Survey, STORET, and "DEQ volunteer." The vast majority are from DEQ's own database. While on one hand this demonstrates that DEQ simply chose to ignore data that it already had—a failure to use all readily available data and information—it says little or nothing about whether EPA evaluated whether DEQ assembled all readily available data and information. Other than reviewing the documents that NWEA submitted to DEQ, there is no indication that EPA attempted to identify whether Oregon had assembled all readily available data and information and there is no master list—prepared by DEQ or EPA—that we can review for that purpose. And EPA has not asked for any additional data and information other than for specific marine sources. Although EPA has specifically not requested such information, for purposes of illustration we provide three examples of readily available sources that do not appear to have been assembled by DEQ.

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First, EPA should have asked DEQ and Oregon permittees whether they had information or data that they had not submitted to Oregon's database. This would turn up, for example, three studies on eutrophication in the Rogue River providing data that EPA may or may not have. EPA's Appendix C lists four samples in the Rogue from DEQ's database that demonstrate violations of biocriteria, resulting in EPA's adding a listing for violations of biocriteria in the Rogue, shown in Enclosure 4, line 66. Because the citation to the database does not state the original sources, but merely references "DEQ" as the source, we cannot tell if EPA has or has not obtained the data and information contained in the following three studies: (1) Rick Hafele, *Medford Regional Water Reclamation Facility Outfall Assessment Study* (Jan. 2013); (2) Brown and Caldwell, *Medford Regional Water Reclamation Facility Mixing Zone and Biological Assessment Study* (April 24, 2014); and (3) DEQ, *Rogue River Algae Reconnaissance: A response to the algae concerns related to the Medford WWTP* (Sept. 2014). All three studies found violations of Oregon's biocriterion in specific locations of the Rogue River. In contrast, a search of DEQ's database for biocriteria findings on the Rogue River brings up a single Category 2 entry for the South Fork of the Rogue River; there is no reference to these three studies.

A second example are studies conducted by the U.S. Fish and Wildlife Service (FWS). These are readily available from that agency's website, as illustrated by the copy of the website we have attached. See *Scientific Reports*, Oregon Fish and Wildlife Office, FWS. There is no indication in DEQ's database that these data have been assembled or considered (for example, the DEQ database contains USGS data on a variety of pesticides in Gray Creek and Brown Creek but no reference to the March 2007 FWS study listed on the agency's website entitled *Environmental Contaminants Program: On-Refuge Investigations Sub-Activity; Assessment of Impacts to Aquatic Organisms from Pesticide Use on the Willamette Valley National Wildlife Refuge Complex*) nor is there any indication from EPA's proposed additions that EPA has assembled or considered them.

Third, DEQ has identified "[w]aterbodies that exceed the criteria but are not identified as category 5 water quality limited" in a presentation on the Yachats River modeling for the Mid-Coast Basin TMDL. See Ryan Michie, DEQ, *Mid-Coast Implementation Ready TMDL, Temperature Technical Work Group* (March 9, 2017) at 5.

In short, while we are pleased to see that EPA has made some progress in plugging the massive holes in Oregon's 303(d) listing process, we are disheartened by the scope of EPA's actions, which fail to identify all of Oregon's waters that fail to meet water quality standards, as demonstrated by readily available data and information, because they rely so heavily on DEQ's existing database and DEQ's unlawful listing methodologies. For this reason, we attach hereto and incorporate by reference, our comments to DEQ on its proposed 2012 list, which we previously sent to EPA.

Jill Fullagar  
March 30, 2017  
Page 3

Sincerely,

A handwritten signature in black ink, appearing to read "Nina Bell", with a stylized, flowing script.

Nina Bell  
Executive Director

Attachments: Rick Hafele, *Medford Regional Water Reclamation Facility Outfall Assessment Study* (Jan. 2013)  
Brown and Caldwell, *Medford Regional Water Reclamation Facility Mixing Zone and Biological Assessment Study* (April 24, 2014)  
DEQ, *Rogue River Algae Reconnaissance: A response to the algae concerns related to the Medford WWTP* (Sept. 2014).  
FWS, *Scientific Reports*, Oregon Fish and Wildlife Office  
FWS, *Environmental Contaminants Program: On-Refuge Investigations Sub-Activity; Assessment of Impacts to Aquatic Organisms from Pesticide Use on the Willamette Valley National Wildlife Refuge Complex* (March 2007)  
Ryan Michie, DEQ, *Mid-Coast Implementation Ready TMDL, Temperature Technical Work Group* (March 9, 2017)  
NWEA, *Oregon's Draft 2012 Integrated Report and Section 303(d)(1) List of Impaired Waters* (Feb. 24, 2014)